

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Income Tax Appeal No. 554 of 2010
Date of Decision: 29.07.2016

Land Acquisition Collector, Improvement Trust, Jalandhar.

..Appellant

versus

Additional Commissioner of Income Tax, Range-III, Jalandhar.

..Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE DEEPAK SIBAL.

Present : Mr. Avneesh Jhingan, Advocate, for the appellant.

Mr. Vivek Sethi, Advocate, for the respondent.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal dismissing the appellant/assessee's appeal against the order of the Commissioner of Income Tax (Appeals) dated 30.11.2007 relating to the assessment year 2005-06.

2. Mr. Jhingan, the learned counsel appearing on behalf of the appellant pressed only question nos. (iii) and (iv) which in our view raise substantial questions of law. The appeal is, therefore, admitted on the following substantial questions of law:-

- “(I) Whether in the facts and circumstances of the case, the Tribunal has erred in not allowing revenue records to be considered as additional evidence?
- (II) Whether in the facts and circumstances of the case, the revenue records should have been considered and the issue regarding land acquired being agriculture land should have been decided by the authorities?”

3. The appellant is a local authority and its income was exempted upto the assessment year 2002-03 under section 10(2) of the Income Tax Act, 1961 (for short 'the Act'). The State Government acquired about 170 acres of land for which the appellant had to make payment. Before making the payment, the appellant addressed a letter dated 17.01.2005 to the Commissioner of Income Tax enquiring about the rate at which the TDS was to be deducted in respect of the amounts to be paid to Non-Resident Indians. This letter is not annexed to the appeal. What is annexed is a letter dated 25.01.2005 addressed by the Income Tax Officer in reply to the petitioner's letter. The subject of the letter is: "*Rate of TDS on compulsory acquisition of land from NRIs-Regarding*" By this letter the appellant was informed that under the provisions of section 195 of the Act tax was to be deducted at 30% of the compensation amount and that 2% surcharge on income tax was also deductible. What is important to note is that the letter is only in respect of TDS qua the amounts payable to Non-Resident Indians. It does not relate to the payment made to residents of India. We will indicate the importance of this distinction later.

4. On 28.06.2005 Income Tax Officer conducted a survey during which the statements of the Patwari and the Superintendent, employees of the appellant, were recorded. It was found that the appellant had made payment towards compensation for acquisition of land at ₹ 66,05,507/- on which TDS of ₹ 6,88,874/- was to be deducted and paid under section 194-LA together with interest of ₹ 49,651/- under section 201(IA) aggregating to ₹ 7,38,525/-. It was also found that the assessee had made payments to NRIs on which the deductions made and paid over were short by ₹ 7,92,490/-. This appeal, however, is not concerned with the TDS in respect of NRIs. It is confined to the question of TDS qua residents.

5. Sections 2(1A), 2(14)(a)(iii) and 194LA of the Income Tax Act, 1961 in so far as they are relevant read as under:-

“2 (1A) “agricultural income” means:-

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;

(b) any income derived from such land by—

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause ;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

(14) “capital asset” means—

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

(b)

but does not include-

(iii) agricultural land in India, not being land situate—
.....”

“Payment of compensation on acquisition of certain immovable property.

194LA. Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax thereon:

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed two hundred/thousand rupees.

Explanation.—For the purposes of this section,—

(i) "agricultural land" means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of [section 2](#);

(ii) "immovable property" means any land (other than agricultural land) or any building or part of a building.”

6. The Income Tax Officer held that section 194LA was applicable to the appellant's case and that there was non-compliance of the section on the appellant's part as no tax had been deducted at source at the time of making payment of compensation to the resident land owners. He noted that the appellant had, however, duly deducted tax on the payments made to the NRIs. The CIT(Appeals) upheld the order in this regard except in respect of an amount of ₹ 73,609/- paid to one of the landowners.

7. The appellant's case is that the lands acquired being agricultural lands were outside the ambit of section 194L and 194LA. The order further records that the appellant had made an application under Rule 46A of the Income Tax Rules, 1962 to produce additional documentary evidence, namely, revenue records to establish that the lands were agricultural lands. This application was rejected on the ground that the Patwari and the Superintendent who were the appellant's employees had in the enquiries made statements contrary to the appellant's case and that the appellant had not produced any material to rebut the same. It was further found that the appellant was afforded adequate opportunities to produce the evidence but had failed to do so.

8. This brings us to the impugned order passed by the Tribunal. In ground No.3 the appellant contended that the CIT(Appeals) had erred in not admitting the additional evidence, namely, the revenue records which it had procured after the assessment order. The revenue records according to the appellant clearly establish that agricultural land was acquired. The appellant also contended that the Assessing Officer had only relied upon the statement of the Patwari which was recorded behind its back without providing it a reasonable opportunity to cross-examine him. It was contended that in any event the statement made by the Patwari did not prove that the land was not

agricultural land. It was further contended that the provisions of section 194LA were not applicable. The appellant made an application even before the Tribunal to admit the revenue records as additional evidence. This application and the appellant's submission in this regard were rejected for the reasons stated in paragraph-10 of the order which reads as under:-

“10. We have heard both the parties and perused the material placed. Section 194LA of the Act casts a statutory liability on the Land Acquisition Officer to deduct income tax at source if the amount of compensation is paid after October 1, 2004 and exceeds one hundred thousand rupees. The question whether a particular land is agricultural land or not is to be determined with reference to definition given in section 2(14)(iii)(a) and (b) of the Act and not with reference to the tenure of the land shown in the land revenue records. A combined reading of section 194LA and the definition of agricultural land given under section 2(14)(iii)(a) and (b) makes it abundantly clear that the competent authority to decide whether any compensation awarded is eligible to income tax is the Income Tax Officer. So it is clear that remedy available to the party is either to approach the competent authority under section 197 of the Act or pay the Income Tax and get it refunded. In the present case, the assessee having applied section 197 have deducted TDS at a particular rate and got the certificate from the AO u/s 197 of the Act, vide letter dated 25.01.2005. Now the assessee is saying that the land acquired by the assessee is agricultural land is not correct. Hence, there is no question of admission of additional evidence in the form of Revenue Record. The same is rejected.”

9. The Tribunal proceeds on the incorrect basis that the words “agricultural land” are to be determined with reference to the definition in section 2(14). The Income Tax Act, 1961 does not define the words “agricultural land”. Section 2(1A) defines agricultural income. The section uses the word “agricultural”. For instance, sub section 2(1A)(a) defines

agricultural income to mean any rent or revenue derived from the land used for agricultural purposes. Sub section (1A)(b) defines agricultural income to mean any income from such land by agriculture. However, the words “agricultural” and “agriculture” and the words “agricultural purposes” are not defined. This is recognized by the judgment of a Division Bench of the Uttarakhand High Court in *Commissioner of Income Tax, Meerut v. M/s Green Gold Tree Farmers (P) Ltd.* 2007 Tax. L.R. 609 (paragraph-12). The observation of the Tribunal that the question whether a particular land is agricultural land or not is to be determined with reference to the definition in section 2(14) and not with reference to the tenure of the land shown in the land revenue records is, therefore, erroneous. There is nothing in the order that supports the observation that these words are defined in section 2(14).

10. Absent any definition of the word “agriculture” and the words “agricultural purposes”, they must be considered in the general sense in which they are understood in common parlance. The above judgment supports this view. The Income Tax Officer indeed had to determine whether the land is agricultural land or not but in doing so he ought to have considered these words in the manner in which they are normally understood. We, however, express no opinion on merits. Nor do we intend furnishing an exhaustive definition of these words. Suffice it to say that they are of a wide amplitude. This issue is also kept open to be decided by the authorities.

11. The finding that the appellant’s remedy was either to approach the competent authority under section 197 of the Act or to pay income tax and get it refunded is also erroneous. Section 197 of the Act reads as under:-

“Certificate for deduction at lower rate:

197. (1) Subject to rules made under sub-section (2A), where, in the case of any income of any person or sum payable to any person, income-tax is required to be

deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections....., the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(2A) The Board may, having regard to the convenience of assesseees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.”

12. If an assessee is not bound to deduct tax at source and to pay the same over and the authority under the Act holds otherwise, it is always open to the assessee to resist the department's claim in the assessment proceedings itself. It is not necessary for the assessee to make an application under section 197 of the Act. Section 197 only entitles an assessee to make an application to the Assessing Officer for a certificate that his total income justifies no deduction of income tax. If such an application is made, the Assessing Officer is bound to give him such certificate as may be appropriate provided of course that he is satisfied that the assessee is entitled to it. This is clear firstly from sub section (1) of section 197 of the Act which provides that the Assessing Officer shall on an application made by the assessee in this behalf give to him such certificate as may be appropriate. The obligation is on the Assessing Officer to give the assessee a certificate as may be appropriate and not on the assessee to make an application for the same. There is no requirement either in section 197 or in any other provision of the Act which requires an assessee to make an application for such a

certificate, if it is his contention that his total income justifies a deduction of income tax at any lower rates or no deduction of income tax. Nor is there anything in the Act that debars an assessee from raising such a contention in the assessment proceedings.

13. Section 197 is for the benefit of the assessee. This is clear from sub section (2) which entitles an assessee to whom such a certificate is given under sub section (1) to deduct income tax at the rates specified in the said certificate or to deduct no tax as the case may be. It does not, however, compel the assessee to do so. Nor does it provide any adverse consequences if the assessee does not apply for a certificate.

14. Sub section (2A) also entitles the “Board” by notification to make rules specifying the cases in which, and the circumstances under which, “an application may be made for the grant of a certificate under sub-section (1)”. The word “may” clearly supports this view.

15. In the result, the appellant not having made an application for a certificate under section 197(1) of the Act cannot be precluded it from contending that it was not bound to deduct tax at source and to pay over the same in the assessment proceedings and in the appeals before the CIT(Appeals) and the Tribunal.

16. The Tribunal further held that the assessee had made an application under section 197 and that he got a certificate from the Assessing Officer under that section vide a letter dated 25.01.2005. We had earlier referred to this letter and mentioned that it was important. What is important is that the letter was in response to an application under section 197 but only in relation to the compensation to be paid to the NRI land owners. The reply was also confined to NRIs under section 195 of the Act. No application was

made under section 197 in respect of the residents of India. The order of the Tribunal, therefore, proceeds on a factually incorrect basis.

17. The decision of the Tribunal, therefore, rejecting the application for admission of additional evidence in the form of revenue records is incorrect and based on incorrect findings of law and of fact. Even assuming that the revenue records do not conclusively establish the appellant's case that the land was agricultural land, it cannot by any stretch of imagination be held that they are irrelevant. The revenue records are relevant to the issue as to whether the lands referred to therein are agricultural lands or not.

18. Mr. Sethi invited our attention to the assessment order which refers to the statements made by the appellant's employees, namely, the Patwari and the Superintendent. Their evidence is of no assistance to the issue as to whether the lands were agricultural land or not. The Patwari infact stated that he had not considered the revenue records and that his duty was only to identify the owners. His statement that he had not seen the crops on the land is by no means conclusive of the question as to whether the lands were agricultural or not. To a question as to whether his department verified whether any actual agricultural activity is being conducted on the lands, he replied that their duty is only to identify the owners of the land and that they are not concern as to whether any agricultural activity is being carried on at the site or not. The Superintendent also expressly stated that no verification is required to be made or is actually made as to whether any agricultural activity is conducted on the land or not. The Assessing Officer held that in view of this evidence the appellant had not verified at the time of disbursement of compensation whether the land in question was actually being used for agricultural purposes or not. No inference can be drawn from this evidence that the land is not agricultural land.

The assessee is entitled to establish in the assessment proceedings whether the land is agricultural land or not.

19. Both the questions of law are, therefore, answered in favour of the appellant and against the respondent-revenue.

20. The appeal is, therefore, allowed. The impugned order on the above questions is set-aside. The Tribunal shall hear the matter on this issue afresh after affording the appellant an opportunity of leading further evidence including the revenue records. It is clarified that the revenue records shall be permitted to be tendered and shall be considered subject to the appellant's satisfying the genuineness thereof.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

29.07.2016
'ravinder'

Whether speaking/reasoned	√ Yes	No.
Whether reportable	√ Yes	No.